



THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
IN CASE NUMBER 29/PUU-XIX/2021

Concerning

Passive Bribery for Civil Servants and Public Officers

Petitioner	:	H. Patrice Rio Capella
Type of Case	:	Review over Law Number 31 of 1999 regarding Eradication of Corruption as amended by Law Number 20 of 2001 regarding Amendment to Law Number 31 of 1999 regarding Eradication of Corruption (Anti-Corruption Law) against the Constitution of the Republic of Indonesia of 1945 (1945 Constitution).
Subject Matter	:	Article 11 of the Anti-Corruption Law is contradictory with Article 28D paragraph (1) of the 1945 Constitution.
Verdict	:	To dismiss the Petitioner's petition in its entirety.
Date of Decision	:	Wednesday, September 29th, 2021.
Overview of Decision:		

The Petitioner is an Indonesian citizen who has served as a Member of Commission III of the House of Representatives of the Republic of Indonesia (DPR-RI) for the 2014-2019 period and during his service as a Member of the House of Representatives, the Petitioner was tried for allegedly committing an act of corruption as provided in Article 11 of the Anti-Corruption Law which contains the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" which, in the Petitioner's opinion, is an ambiguous, subjective provision and contradictory with the basic characteristics and principles of criminal law as well as the norms of Article 28D paragraph (1) of the 1945 Constitution.

In its Claims, the Petitioner requested the Court to declare that the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" in Article 11 of the Anti-Corruption Law is contradictory with the 1945 Constitution and not legally binding.

Whereas in relation to the jurisdiction of the Court, considering that the petition submitted in this case is the review over the constitutionality of norms of law, in this case Article 11 of the Anti-Corruption Law against the 1945 Constitution, the Court has the jurisdiction to hear the petition in this case.

In relation to the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has explained his constitutional right as guaranteed by the provisions of Article 28D paragraph (1) of the 1945 Constitution which according to the Petitioner is impaired by the enactment of norms of the law for which the review has been requested, in this case Article 11 of the Anti-Corruption Law. The alleged constitutional damage as mentioned above is specific and actual in nature or at least may potentially occur and it has a causal relationship with the enactment of the norms of the law for which the review has been requested.

Therefore, if the Petitioner's petition is granted, the alleged constitutional damage as described above would not or would cease to exist. Therefore, according to the Court, the Petitioner has the legal standing to act as Petitioner under the petition in this case.

Whereas considering the clarity of that the petition in this case, the Court believes that it is not urgent and relevant to request information from such parties as specified in Article 54 of the Constitutional Court Law.

In relation to the subject matter of the petition, the Court is in the opinion that the act of corruption is a grave issue which is encountered by not only Indonesia but almost all states worldwide so that the world community put a high expectation for efforts to eradicate corruption and agree that corruption impair justice and social norms as adopted in the society. The legislators, as representatives of the people, desired to overcome the above-mentioned situation by creating the Anti-Corruption Law which incorporates a more effective mechanism for eradicating corruption that is not only aimed at defining acts which can be categorized as corruption and the consequences for such acts (social order) but also cultivate anti-corruption attitudes, mental and social behaviour in a structured, systematic and massive manner (social engineering). Therefore, in order to understand the norms under the Anti-Corruption Law, they must be put into the political legal context of the eradication of corruption either as a tool of social order or a tool of social engineering. Therefore, the spirit behind the formulation of norms under the Anti-Corruption Law was to set forth rules that could anticipate legal events which will occur in the future so that they can be reached by norms of the law in this case by expanding the reach and the scope of actions categorized as acts of corruption.

Before examining the Petitioner's claims, the Court expressed its opinion that the main subjects for the eradication of corruption as stipulated in the Anti-Corruption Law are civil servants and public officers. The foregoing is intended to ensure that the community could receive professional and quality public services, particularly those directly related to daily public services for the community. Therefore, every public officer, state administrator, law enforcement agent and everyone who carries out public functions must be prudent in his attitudes and behaviour/action. This includes accepting gifts of any type, considering that public officers and state administrators are bound to ethical standards which regulate and limit his rights in the social life. In the Court's view, the above limitation of rights is part of the implementation of Pancasila values which require a person who is subject to a legal norm to become both individual and social being.

Furthermore, the Petitioner argued that the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" in Article 11 of the Anti-Corruption Law is contradictory with the right to a fair legal certainty as set forth in Article 28D paragraph (1) of the 1945 Constitution on the ground that the norm is substantially illogical that it is inconsistent with the principles of criminal law as applicable and recognized in Indonesia which strictly stipulates that a person can only be punished for committing an act that is prohibited by the laws and regulations. In relation to the Petitioner's argument above, the Court considers that the formulation of corruption in Article 11 of the Anti-Corruption Law is adapted from and in harmony with Article 418 of the Indonesian Criminal Code, which is one of occupational crimes provided in CHAPTER XXVIII of the Indonesian Criminal Code concerning Occupational Crimes, which incorporates the following elements: (i) civil servants or public officers; (ii) accepting a gift or promise; and (iii) even though it is known or reasonably expected that the gift or promise was given because of the power or authorities related to his position, or which is believed by the person giving the gift or promise to have a connection with his position. The main element as the subject of the norm (*norm-gedrag*) in the above provision is "accepting a gift or promise", while the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" is one of the conditions for the norm (*norm-conditie*) which does not mention the specific behaviour or action required or prohibited.

Furthermore, the Petitioner argued that the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" in Article 11 of the Anti-Corruption Law causes, according to the Petitioner, a person to be punishable for the thought/belief of another person which is not proven and therefore the clause is contradictory with Article 28D paragraph (1) of the 1945 Constitution. The Court is of the opinion that the formulation of the above provision must be understood within the political legal context of the Anti-Corruption Law which requires a balance between individual and social rights and is aimed at reducing corruption so that it is not massive, cross-sectoral and systematic. In such circumstances, the emphasis on the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" in Article 11 of the Anti-Corruption Law is to expand the scope of corrupt acts which is not separable from the spirit to preserve the state assets and ensure that justice and social norms in social life can be restored in order to achieve social welfare.

Furthermore, the Petitioner also argued that the phrase "*which is believed by the person giving the gift or promise to have a connection with his position*" in Article 11 of the Anti-Corruption Law is difficult to prove since according to the Petitioner no one has an absolute knowledge which enables him to give information about or prove what another person thinks and for that reason, the provision is contradictory with Article 28D paragraph (1) of the 1945 Constitution. In relation to the Petitioner's argument above, the Court is in the opinion that the formulation of norms in Article 11 of the Anti-Corruption Law which, in its conditions, stipulates "even though it is known or reasonably expected" requires persons being subject to the norms, namely civil servants or public officers, may always foresee situations which will occur or possibly arise as implied by the 'negligence' element in a formulation of offence. In the element of negligence, the perpetrator must be able to imagine the possibility of things to happen and cause the fulfilment of the elements of an offence, which in this case are giving a gift or promise, which would not possibly be given if he is not holding his office. For the above reason, the provision does not in any way prevent the fulfilment of the rights of citizens to be subject to a due process of law. A suspect, and a defendant, have the right to have his statement heard about the events he was accused of and to have the widest opportunity to prepare and present his defence supported by valid legal evidence.

Therefore, the Court considers that there is no issue about the constitutionality of norms regarding the right to fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution against Article 11 of the Anti-Corruption Law and for that reason, according to the Court the Petitioner's argument is not legally justifiable.

Upon all legal considerations above, the Court subsequently issued a decision which in its verdict dismissed the Petitioner's petition in its entirety.